

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of :
Yasuo FUKAGAWA et al. :
Serial No. 09/284,578 : **Attn: BOX MISSING PARTS**
Filed April 15, 1999 : Docket No. 325/E6627
BIOLOGICALLY ACTIVE POLYMER :
PRODUCTS :

PETITION FOR ACCEPTANCE OF APPLICATION

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

Petition is hereby made for acceptance of the above-identified application under 37 CFR 1.47(a).

The required petition fee of \$130.00 is enclosed.

The other papers submitted herewith are identified in the REPLY TO NOTICE TO FILE MISSING PARTS OF APPLICATION submitted herewith, in reply to the PTO Notification of Missing Requirements mailed May 11, 1999. These papers include the required Declaration and Power of Attorney, proof of the pertinent facts, and the last known address of the nonsigning Inventor.

Respectfully submitted,

Yasuo FUKAGAWA et al.

By: 

Michael R. Davis

Registration No. 25,134

Attorney for Applicants

MRD/sls
WENDEROTH, LIND & PONACK
Washington, D.C. 20006
Telephone (202) 721-8200
Facsimile (202) 721-8250
October 8, 1999

THE COMMISSIONER IS AUTHORIZED
TO CHARGE ANY DEFICIENCY IN THE
FEE FOR THIS PAPER TO DEPOSIT
ACCOUNT NO. 23-0975.

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Ser. No. 09/284,578

For: BIOLOGICALLY ACTIVE POLYMER PRODUCTS

the specification of which: (check and complete (a), (b) or (c))

- (a) ☐ is attached hereto.
- (b) ☐ was filed on _____ as Application Serial No. 0 / _____ and was amended on _____ (if applicable).
- (c) ☒ was described and claimed in International Application No. PCT/JP97/03710 filed on October 15, 1997 and as amended on _____ (if any).

DECLARATION OF FACTS IN SUPPORT OF FILING ON BEHALF OF OMITTED INVENTOR (37 CFR 1.47)

NOTE: This declaration as to the pertinent facts concerning the refusal of the omitted inventor to join in the application or where the omitted inventor cannot be found or reached must accompany the declaration signed on behalf of the omitted inventor by a joint inventor or by a legal representative who shows a proprietary interest. Where the entity with a proprietary interest executes the declaration on behalf of the omitted inventor there must also be a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage. 37 CFR 1.47.

This declaration is made as to the exact facts which are relied upon to establish the diligent effort made to secure the execution of the declaration by the omitted inventor for the above identified patent application before deposit thereof in the Patent and Trademark Office.

(check box for next item, if applicable)

- ☐ Since signing on behalf of the omitted inventor is by a person or entity showing a sufficient proprietary interest this declaration also recites facts as to why this action was necessary to preserve the rights of the parties or to prevent irreparable damage.

This declaration is being made by the available person having first-hand knowledge of the facts recited therein.

NOTE: The "declaration must be signed, where at all possible, by a person having first-hand knowledge of the facts recited herein." MPEP § 409.03(d). If different persons have first-hand knowledge of different facts than a declaration from each such person as to those facts he or she knows should be submitted separately.

(Declaration of Facts in Support of Filing on Behalf of Omitted Inventor [1-6]—page 1 of 8)

IDENTIFICATION OF PERSON MAKING THIS DECLARATION OF FACTS

Hiromi TAKAYASUc/o EBARA CORPORATION of 11-1, Haneda Asahi-cho, Ohta-ku
Tokyo 144-8510 Japan

DETAILS OF REFUSAL OF OMITTED INVENTOR TO SIGN APPLICATION PAPERS

I talked with Mr. Fukagawa over phone on April 19, 1999 and asked him to sign necessary papers for entering national phases in the U.S and Canada. Subsequently, I wrote a letter dated April 21, 1999 to Mr. Fukagawa, as shown by Exhibit 1 and a verified English translation thereof. The letter enclosed a Declaration and assignments for entering the national phases in the U.S. and Canada. Specifically, the letter enclosed a Declaration for the U.S. patent application; an assignment for the U.S. patent application; and an assignment for the Canadian patent application. However, the letter did not enclose an English translation of the PCT application.

In reply, Mr. Fukagawa sent an E-mail message on April 22, 1999 and subsequently a printout of the message dated April 23, 1999 to me. The printout is shown as Exhibit 2 with a verified English translation. In the message, Mr. Fukagawa declined to execute the Declaration.

I wrote another letter dated September 22, 1999 to Mr. Fukagawa for asking to execute a Declaration and assignments for entering national phases in the U.S. and Canada, as shown by Exhibit 3 and a verified English translation thereof. The letter encloses: an English translation of the PCT application, which includes the specification, including claims, the drawings and the abstract, and which is a copy of the papers filed with the United States Patent Office; a Declaration for the U.S. patent application; an assignment for the U.S. patent application; and an assignment for the Canadian

patent application.

In reply, Mr. Fukagawa sent an E-mail message to me dated October 1, 1999. The printout of the E-mail message is shown by Exhibit 4 and an English translation thereof. Mr. Fukagawa sent another reply to me as shown by Exhibit 5 and a verified English translation thereof. As shown by Exhibits 4 and 5, Mr. Fukagawa declined to execute the Declaration.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated this 7th day of October, 1999.

Hiromi Takayasu

Hiromi TAKAYASU



Exhibit 7

平成 11 年 4 月 21 日

深川 泰男 殿

株式会社荏原製作所
知的財産部
副部長 高安 廣美特許出願「生物活性高分子製品」の件
生物活性高分子製品 PCT/JP97/03710

前略

4 月 19 日にお電話でお話し、お願い申し上げました通り、貴殿が在職中に完成された発明に関して、米国、カナダへ出願の移行手続きを行なうに当たり、必要な書類にサインをお願いいたします。

必要な書類は、declaration と assignment の 2 種類の書類であり、それぞれの書類のサインの必要な箇所には、鉛筆でしるしを付けておりますので、そこにサインをし、1 週間以内にご返送ください。

なお、貴殿におかれましては、何らかの事情で、同封の書類にサインできない場合には、至急、書面でご連絡下さるようお願い申し上げます。

なお、本件に関して、ご質問等がおありになれば、何時でも、ご連絡下さるようお願いいたします。

草々

Exhibit Z

これは1999年4月22日夜11時過ぎに送ったE-メールのプリントアウトです。
記録として別送します。

深川泰男
(4月23日)

高安様

1999年4月22日夕刻簡易書留入手しました。 急いで要点のみを書きます。

- 1) 荏原単願の「生物活性高分子製品」、荏原-生化学工業共願の「D-マンノース識別アフィニティー担体とその使用方法」および「ベンゾナフタセンキノン誘導体」の合計三特許の間には、共願の二特許が荏原単独先行出願の特許「生物活性高分子製品」に従属するという親子の関係が存在する。従って親特許が成立・存在して、初めて子の二件の共願特許が存在しうることになる。
- 2) 今回アメリカ・カナダへの出願を行おうとしている「生物活性高分子製品」には以下のような事情で致命的な欠陥があると考えられる(詳細は1998年1月23日付けの「関連特許と現状(概略)」に纏められている)ので、荏原製作所の久保氏と湯浅法律特許事務所の小池弁理士から私が納得できるような見解と対策を聞かせてもらわない限り、DeclarationにもAssignmentにも私はサインしない。
- a) 1996年10月15日栄光特許事務所から「生物活性を持つ高分子基体製品」という特許(P-23980)が荏原の単独出願で出願された。
(注 ただしベンゾナフタセンキノンの項は含まず。7つの請求項からなるもので、内容と記述に間違い無し。)
- b) 1997年8月26日にベンゾナフタセンキノン請求項目の追加に関して久保氏と小池弁理士に書面および口頭で一項目の追加を指示し、必要な実施例を渡した。
- c) 発明者と全く相談せずに、1997年10月28日湯浅法律特許事務所から「生物活性高分子製品」なる補正特許が出願された。文字通り驚いたことに特許請求範囲の構成が徹底的に変更され、技術内容的に間違っただけ(しかも無関係、いや重大な障害になる可能性の大きな)記載が本文にも請求範囲にも追加されていた。
- (注 1. 小池氏にも久保氏にも特許および科学技術の取り扱いに関して根本的な、話にならない重大欠陥がある。
2. 請求項目が発明者指示の9項目に対して22項目と異常増加し、技術内容も論理記述も間違っている。
3. 先行の発明者の正しい請求項記述を、補正書で弁理士と特許担当者がわざわざ間違っただけのものに書き直しているのだからどうすることもできない。
4. 更に本文では、想像を絶する間違いを犯している。即ち先行の栄光特許では「薬剤が絶対に外れない共有結合で固定化された高分子製品」を「バイオニア特許」として主張し、本文の記述もそれを証明する記述になっている。しかるに、湯浅の補正特許では最重要実施例アンピシリンに関連して「部分的徐放性を前提とする化合物の構造が極めて具体的に記載されている」。
(例えば請求項 17および本文 6-7頁、16-17頁。特にR1の定義!!。当業者、いやちょっと勉強している常識のあるバイオ研究者ならば「プロドラッグ」と言えば、直に概念的に判る「徐放性薬剤」が特殊なR1を持つのである。R1が残っていたら、絶対に生物活性が無いのである。)
5. 極論すれば、湯浅の補正特許と称するものは全く別物の特許であり、しかも本文の記述が多数の個所で科学的に間違っているのだから話にならない。
6. 久保氏と小池氏は矛盾無く特許を成立させられると主張してきたし、今もそう考えているから、アメリカとカナダの出願手続きを始められたと理解するが、発明者が間違っているということをどう解決されるのか具体的に方策を聞かせてほしい。)

以上



Exhibit 3

平成 11 年 9 月 22 日

深川 泰男 殿

株式会社 荏原製作所

知的財産部

副部長 高安 廣美

特許出願「生物活性高分子製品」の件
生物活性高分子製品 PCT/JP97/03710

前略

本件に関し、4 月末に貴殿から送付されました書面を受け取りました。

本件につきましては、前回当方から送付した際に、英文翻訳文を同封しておりませんでしたので、再度、本件特許の英文翻訳文とサインの必要な書類をお送り致します。

今回、米国、カナダへ出願の移行手続きを完了するために、必要な書類にサインをあらためてお願いいたします。

必要な書類は、declaration と assignment の 2 種類の書類であり、それぞれの書類のサインの必要な箇所には、鉛筆でしるしを付けておりますので、そこにサインをし、1 週間以内にご返送くださいますようお願いいたします。

なお、貴殿におかれましては、何らかの事情で、同封の書類にサインできない場合には、至急、書面でご連絡下さるようお願い申し上げます。

なお、本件に関して、ご質問等がおありになれば、何時でも、ご連絡下さるようお願いいたします。

草々

添付書類

1. 本件特許の英訳文
2. 米国、カナダへの出願のための declaration と assignment

Exhibit 4

Fukagawa Y, 07:50 99/10/01 +0900, 文書受け取り遅延の件と依頼

From: "Fukagawa_Y" <Fukagawa_Y@email.msn.com>
To: "高安" <takayasu@ebara.co.jp>
Subject: 文書受け取り遅延の件と依頼
Dat : Fri, 1 Oct 1999 07:50:34 +0900
X-MSMail-Priority: Normal
Importance: Normal
X-MimeOLE: Produced By Microsoft MimeOLE V4.72.3110.3

高安様

前略

9月22日付けの郵便物昨日9月30日に受け取りました。遅延理由は郵便局の事務通知はがきが郵便受けボックスの上部にひっかかっており、未認知のまま放置され、昨日の二回目の事務通知はがきで高安様からの郵便物の存在を知り、あわてて藤沢本局に駆けつけ、入手した次第です。この事情を説明しておきたくて、30日午後にtel.をさし上げ、不在につき、連絡をお願いしておいたのですが、ついに30日中にはtel.いただけませんでした。さて本件について手短に私の質問を述べます。既に何回も述べていますように、久保さんと小池弁護士が独断で本特許の発明内容を間違えた内容に改悪されており、到底発明者の私には科学技術としての特許内容を特許庁に説明できないのです。まずこの問題については、どう対策を立てられたのでしょうか？ 第二にこの特許に依存して二件の特許が存在していますが、生化学工業および微生物化学研究所との契約違反の問題はどう解決されたのでしょうか？ これらの問題について説明が無い限り、サインできないことは容易に理解できることと存じます。別送で本e-mailは郵送しますが、締め切り期日もあるので、取りあえずtel.またはe-mailで説明をお願いします。深川泰男（1999年10月1日朝7:45）

"高安 廣美" <takayasu@ebara.co.jp> の印刷

1

Exhibit 5

1999年10月4日

荏原製作所・知的財産部

高安副部長殿

深川泰男



外国特許出願の件

前略。貴社の1999年9月22日付の特許出願に関する手紙と特許明細書を深川は1999年9月30日に入手しました。尚今回の入手遅延は、郵便配達人の不注意のために不在配達不能の通知が郵便受けの途中にひっかかって落ちず、私の注意を引かなかったためですが、一週間という短期間に返事を要求する場合今後はe-mailまたはtel.で配送の予告をして頂きたいと思います。既にtel.およびe-mailでお話しし、一応の了解を得ておりますように、以下のような理由で現時点ではdeclarationとassignmentのサインはできません。

記

1. 上記二種の書類は未だ最終提出期限まで間があるので、今すぐサインする必要はないと理解している。この特許の日本出願については既に譲渡審にサインしているの、次項以下の重大問題が納得できる形で解決されたら、深川はサインするつもりである。
2. 現時点で深川を発明者にあげた特許は、荏原からこの特許を含め三件日本出願されているが、この特許が親特許であり、後の二件はこの特許に従属している。従って三件の特許が相互に矛盾を含んではならないことは勿論のこと、特にこの親特許の内容が従属特許の命運を決めるといっても言い過ぎではない。
3. 既に深川が繰り返し文書で社内抗議し、聞き入れられないために抗議退社したように、この特許は特許部の久保氏と湯浅法律特許事務所の小池氏の非常識な取り扱いで発明者・深川の指示を完全無視して発明内容が徹底改悪されている。しかも発明者に検閲させることなく独断で訂正出願されたために発明者本人はこの訂正特許の致命的な間違いを出願前に知るよしも無かった。
4. 特許の内容と構成は発明者が全責任を持って作るものであり、特許担当者と弁理士は出願の事務手続きで補助的な役割をはたすものであるという特許作成上の基本原則を完全無視した今回のトラブルについて深川は久保氏と小池氏の謝罪を文書で要求する。さもないと、完全な一個人である深川は今後何も協力できない。
5. その後で深川は久保氏と小池氏に本特許に関して具体的な分割明細書案と分割明細書の早急な提示を要求する。

草々

VERIFICATION OF A TRANSLATION

I, the below named translator, hereby declare that:

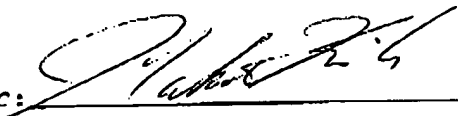
My name and post office address are as stated below:

That I am knowledgeable in the English language and the Japanese language, and that I believe the attached English translation is a true and complete translation of the letter of Mr. Hiromi TAKAYASU addressed to Mr. Yasuo FUKAGAWA dated April 21, 1999 in connection with the U.S. Patent Application Serial No. 09/284,578.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated this 7th day of October, 1999.

Full name of the translator: Makoto KOIKE

Signature of the translator: 

Post Office Address: c/o YUASA AND HARA, Section 206,
New Ohtemachi Bldg., 2-1, Ohtemachi
2-chome, Chiyoda-ku, Tokyo, JAPAN

[An English translation of a letter of Mr. Hiromi Takayasu
addressed to Mr. Yasuo Fukagawa dated April 21, 1999]

April 21, 1999

Mr. Yasuo Fukagawa

Ebara Corporation
Intellectual Property
Department
Manager Hiromi Takayasu
[sealed] Takayasu

Re: Patent Application "Biological Active Polymer
Products"
Biological Active Polymer Products PCT/JP97/03710

Dear Sir:

As we talked and asked you over phone on April 19, we would ask you to sign necessary papers for entering national phases in the U.S. and Canada concerning an invention you made while you were employed.

The necessary papers are two papers, namely, Declaration and Assignments, and a place where your signature is necessary in each paper is marked by a pencil. Please sign there, and return [the papers] in a period of one week.

Incidentally, should you be not able to sign the papers enclosed in some circumstances, we would ask you to urgently contact us in writing.

Incidentally, should you have any question concerning this case, we would ask you to contact us in any time.

Sincerely,

VERIFICATION OF A TRANSLATION

I, the below named translator, hereby declare that:

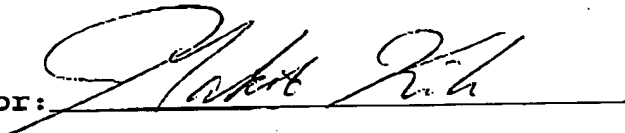
My name and post office address are as stated below:

That I am knowledgeable in the English language and the Japanese language, and that I believe the attached English translation is a true and complete translation of the Message of Mr. Yasuo FUKAGAWA addressed to Mr. Hiromi TAKAYASU dated April 23, 1999 in connection with the U.S. Patent Application Serial No. 09/284,578.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated this 7th day of October, 1999.

Full name of the translator: Makoto KOIKE

Signature of the translator: 

Post Office Address: c/o YUASA AND HARA, Section 206,
New Ohtemachi Bldg., 2-1, Ohtemachi
2-chome, Chiyoda-ku, Tokyo, JAPAN

[An English translation of a message of Mr. Yasuo Fukagawa
addressed to Mr. Hiromi Takayasu]

This is a printout of the e-mail sent after 11 o'clock in the evening
on April 22, 1999. [I] am sending [the printout] as record.

Yasuo Fukagawa
(April 23)

Dear Mr. Takayasu:

I obtained the recorded delivery in the evening of April 22,
1999. Only the gist is jotted.

1) Concerning a total of three patents, namely, "Biologically
Active Polymer Products" filed by Ebara alone as well as "Affinity
Carrier for Recognizing D-Mannose and use thereof" and
"Benzonaphtacenequinone Derivatives" co-filed by Ebara and
Biochemical Engineering, there exist parent-children relations
where the two co-filed patents depend on the patent "Biologically
Active Polymer Products," which is a prior application filed by
Ebara alone. Therefore, the two children patents co-filed come
into existence only when the parent patent comes into existence.

2) It is considered that "Biologically Active Polymer Products,"
which is being filed in the U.S. and Canada, has fatal defects as
follows (details are summarized in "Relevant Patents and Current
Situations (summary)"). Therefore, unless Mr. Kubo of Ebara
Corporation and Patent Attorney Koike at Yuasa & Hara tell me
positions and measures that convince me, I shall not sign a
Declaration or an Assignment.

a) On October 15, 1996, patent "Polymer Substrate Products
having Biological Activity" (P-23980) was filed by Ebara alone from
Eiko Patent Firm. (Note: A claim concerning
benzonaphtacenequinone is not included. 7 claims are included, and
there is no mistake in the content and disclosure.)

An English translation of a message of Mr. Yasuo Fukagawa

Page 2

b) On August 26, 1997, [I] instructed to add one claim in writing and in oral to Mr. Kubo and Patent Attorney Koike concerning the addition of a claim of benzonaphtacenequinone and handed necessary Examples [to Mr. Kubo and Patent Attorney Koike].

c) Without any consultation with an inventor, on October 28, 1997, amended patent "Biologically Active Polymer Products" was filed from Yuasa & Hara. To my surprise, the constitutions of the claims are completely altered, and technically wrong disclosure (which may be irrelevant or has large possibilities for significant obstacles) was added to the main text and the claims.

(Note 1. Mr. Koike and Mr. Kubo has fundamental, ridiculous, significant defects concerning handling of patents as well as science and technology.

2. The number of claims extraordinarily increased from 9, which was instructions of an inventor, to 22. Moreover, the technical contents and logical recitations are wrong.

3. Correct recitations of the prior claims by the inventors were rewritten to make it wrong by a patent attorney and a person in charge of patent, and there is nothing I can do.

4. Moreover, in the main text, unimaginable mistakes were committed. In prior Eiko patent, "a polymer product wherein a drug is immobilized by a covalent bond by which the drug is never released" is maintained to be a "pioneer patent," and the disclosure in the main text proves that. However, in amended patent by Yuasa, structures of compounds which are partially gradually releasable are specifically disclosed in connection with most important Examples, ampicillin. (For example, claim 17 and the main text at pages 6, 7, 16 and 17, [which corresponds to an English translation of the specification from page 10, line 28 to page 13, lines 12 and from page 27, line 9 to page 29, line 28] especially definition of R1!!).

An English translation of a message of Mr. Yasuo Fukagawa

Page 3

5. In one extreme view, amended patent by Yuasa is a totally different patent. Further, the disclosure in the main text is scientifically wrong in many places, and simply ridiculous.

6. It is my understanding that, since Mr. Kubo and Mr. Koike has maintained and thinks even now that the patent will come into force without contradiction, filing procedures in the U.S. and Canada were initiated. I wish to listen to specific measures how to solve what the inventor says is wrong.)

over

VERIFICATION OF A TRANSLATION

I, the below named translator, hereby declare that:

My name and post office address are as stated below:

That I am knowledgeable in the English language and the Japanese language, and that I believe the attached English translation is a true and complete translation of the letter of Mr. Hiromi TAKAYASU addressed to Mr. Yasuo FUKAGAWA dated September 22, 1999 in connection with the U.S. Patent Application Serial No. 09/284,578.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated this 7th day of October, 1999.

Full name of the translator: Makoto KOIKE

Signature of the translator: 

Post Office Address: c/o YUASA AND HARA, Section 206,
New Ohtemachi Bldg., 2-1, Ohtemachi
2-chome, Chiyoda-ku, Tokyo, JAPAN

[An English translation of a letter of Mr. Hiromi Takayasu
addressed to Mr. Yasuo Fukagawa dated September 22, 1999]

September 22, 1999

Mr. Yasuo Fukagawa

Ebara Corporation
Intellectual Property
Department
Manager Hiromi Takayasu
[sealed] Takayasu

Re: Patent Application "Biological Active Polymer
Products"
Biological Active Polymer Products PCT/JP97/03710

Dear Sir:

With regard to this case, we received a paper forwarded from
you in late April.

With regard to this case, since we did not enclose an English
translation at the time of forwarding [papers] from us in the last
time, we are forwarding an English translation of the present patent
case and papers that requires [your] signature.

At this time, we would ask you again to sign necessary papers
for completing the entry into national phases in the U.S. and Canada.

The necessary papers are two papers, namely, Declaration and
Assignments, and a place where your signature is necessary in each
paper is marked by a pencil. Please sign there, and return [the
papers] in a period of one week.

Incidentally, should you be not able to sign the papers
enclosed in some circumstances, we would ask you to urgently contact

us in writing.

Incidentally, should you have any question concerning this case, we would ask you to contact us in any time.

Sincerely,

Enclosed papers:

1. An English translation of the present patent
2. Declaration and Assignments for filing in the U.S. and Canada

VERIFICATION OF A TRANSLATION

I, the below named translator, hereby declare that:

My name and post office address are as stated below:

That I am knowledgeable in the English language and the Japanese language, and that I believe the attached English translation is a true and complete translation of the E-mail message of Mr. Yasuo FUKAGAWA addressed to Mr. Hiromi TAKAYASU dated October 1, 1999 in connection with the U.S. Patent Application Serial No. 09/284,578.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated this 7th day of October, 1999.

Full name of the translator: Makoto KOIKE

Signature of the translator: 

Post Office Address: c/o YUASA AND HARA, Section 206,
New Ohtemachi Bldg., 2-1, Ohtemachi
2-chome, Chiyoda-ku, Tokyo, JAPAN

[An English translation of an E-mail message of Mr. Yasuo Fukagawa addressed to Mr. Hiromi Takayasu]

Fukagawa Y, 07:50 99/10/01 +900, Regarding delay of receiving documents and request

From: "Fukagawa_Y" <Fukagawa_Y@email.msn.com>
To: "Takayasu" <takayasu@ebara.co.jp>
Subject: Regarding delay of receiving documents and request
X-MSMail-Priority: Normal
Importance: Normal
X-MimeOLE: Produced By Microsoft MimeOLE V4.72.3110.3

Dear Mr. Takayasu:

Dear Sir:

Yesterday, September 30, [I] received the mail dated September 22. The reason for the delay is that the notice for delivery was caught in the top of the mailbox and left as it was without being recognized. The second notice for delivery yesterday made me realize the presence of the mail from Mr. Takayasu, and [I] urgently went to the main Fujisawa post office for obtaining [the mail]. I wished to explain the circumstances and made a phone call in the afternoon of [September] 30. Since [Mr. Takayasu] was absent, [I] left a message to contact me. However, I did not receive a phone call on [September] 30.

I wish to state my questions briefly on this case. As I have stated so many times, Mr. Kubo and Patent Attorney Koike disimproved the contents of the present patent into wrong contents on their authority, and therefore, I as an inventor cannot possibly explain the contents of the patent as scientific technology to the Patent Office. Firstly, what measures have you taken on this problem? Secondly, two patents exist depending on the patent, and how have you solved the problem concerning breach of contract with Biochemical Engineering and Research Institute of Microorganism Chemistry?

I trust that [you] can easily understand that I cannot sign [the papers] unless explanations are given to these problems.

This e-mail is separately sent by mail, and since there is a due date, [I] would ask you to explain by telephone or e-mail. Yasuo Fukagawa(7:45 in the morning of October 1, 1999)

VERIFICATION OF A TRANSLATION

I, the below named translator, hereby declare that:

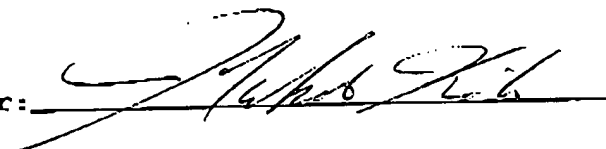
My name and post office address are as stated below:

That I am knowledgeable in the English language and the Japanese language, and that I believe the attached English translation is a true and complete translation of the letter of Mr. Yasuo FUKAGAWA addressed to Mr. Hiromi TAKAYASU dated October 4, 1999 in connection with the U.S. Patent Application Serial No. 09/284,578.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated this 7th day of October, 1999.

Full name of the translator: Makoto KOIKE

Signature of the translator: 

Post Office Address: c/o YUASA AND HARA, Section 206,
New Ohtemachi Bldg., 2-1, Ohtemachi
2-chome, Chiyoda-ku, Tokyo, JAPAN

[An English translation of a letter of Mr. Yasuo Fukagawa dated October 4, 1999 addressed to Mr. Hiromi Takayasu]

October 4, 1999

Ebara Corporation
Intellectual Property Department
Manager Takayasu

Yasuo Fukagawa
[sealed] Fukagawa

Re: Foreign Patent Application

Dear Sir:

Yesterday, on September 30, 1999, [I] received your letter dated September 22, 1999 concerning the patent application and the patent specification. Incidentally, the reason for the delay in receiving [them] at this time is that, due to negligence of a postman, the notice for absentee delivery was caught in the middle of the mailbox and did not drop, and that it did not raise my attention. Should you request to respond in a period as short as one week, I would ask you to notify [me] of the delivery by e-mail or telephone in the future. As [I] talked over telephone and e-mail and had prima facie understanding, [I] cannot sign the declaration or assignments at present for following reasons.

Remarks

1. It is my understanding that the two papers still have time until the final due date expires and that it is not necessary to sign [the papers] immediately. Since [I] signed an assignment for the corresponding Japanese patent application, if serious problems in the following items are resolved in a convincing manner, Fukagawa would sign [the papers].
2. At present, with regard to patents where Fukagawa is an

inventor, three Japanese applications were filed by Ebara. This patent is a parent patent, and the subsequent two cases depend on the patent. Therefore, it is natural that the three patents should not contradict each other, and it is not too much to say that the content of the parent patent determines the destiny of the dependent patents.

3 As Fukagawa repeatedly protested in writing in the company, and left the company since [the protest] was not listened to, this patent was completely disimproved by absurd treatments of Mr. Kubo of the patent department and Mr. Koike of Yuasa & Hara that instructions of an inventor Fukagawa were completely ignored. Moreover, without a review by the inventor, the corrected application was filed on their authority, and therefore, the inventor himself could not possibly know the fatal defects of the corrected patent prior to the filing thereof.

4. The contents and constitutions of the patent should be made by the whole responsibility of the inventor, and a person in charge of patent and a patent attorney should play supplementary roles. This basic principle of preparing the patent was completely ignored, and Fukagawa would request apologies of the trouble in this case from Mr. Kubo and Mr. Koike in writing. Otherwise, Fukagawa, who is merely one individual, cannot cooperate in the future.

5. Subsequently, Fukagawa requests Mr. Kubo and Mr. Koike to urgently present a specific draft divisional specification and a divisional specification concerning the present patent.

Sincerely,

LAST KNOWN ADDRESS OF THE OMITTED INVENTOR

NOTE: The last known address of the omitted inventor must be stated so that the PTO can forward the notice of filing of the application to the omitted inventor at said address. (37 CFR 1.47).

Full name of omitted inventor

Yasuo FUKAGAWA

Last known address of omitted inventor

1-18-8-301, Zengyo, Fujisawa-shi, Kanagawa-ken 251-0871 Japan

NOTE: Ordinarily the last known address will be the last known address of the omitted inventor but other addresses at which the omitted inventor may be reached should also be given in the space below. MPEP § 409.03(e).